



Nebraska Appleseed

Core Values | Common Ground | Equal Justice

Introduction to Nebraska Appleseed

- Nebraska Appleseed is a non-profit, non-partisan public interest law firm that works for equal justice and full opportunity for all Nebraskans.
- Nebraska Appleseed uses litigation, public policy reform, and community education to positively impact low-income families, immigrants, children in foster care, and access to healthcare.



Introduction to Nebraska Appleseed

Nebraska Appleseed seeks law and policy that:

- supports **low-income Nebraskans** in becoming truly **self-sufficient**;
- promotes the **integration and participation** of **immigrant** populations in Nebraska communities;
- ensures **access** to quality affordable **health care** for all Nebraskans;
- increases low-income Nebraskans' access to **affordable legal assistance**;
- provides **safe and adequate child welfare** services for Nebraska's **children in need of protection**; and
- **builds democracy** through increased **low-income Nebraskan participation** in electoral and public policy decision-making processes.



Presentation Overview

- Federal law background
- LB 403's public benefit provisions
 - LB 403's affect on public benefits
 - Prenatal care loss in Nebraska
 - What do LB 403's public benefit provisions mean for employers?
- LB 403's Public Employer/Contractor Provisions
 - What do LB 403's public employer/contract provisions mean for employers?
- Questions



Legislative Bill 403 (LB 403): Overview

- In 2009, the Nebraska Legislature passed LB 403.
- LB 403 has two distinct parts:
 - First, LB 403 requires verification of lawful presence for a person to get “public benefits.”
 - Second, LB 403 requires every public employer and public contractor to use E-verify to verify the work eligibility status of newly hired employees.



Immigrants and Public Benefits

- Federal Law Background:
 - The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). 8 U.S.C. §1601 *et seq.*
 - Created a scheme for determining immigrant eligibility for public benefits.
 - Created categories of persons that are either eligible or ineligible to receive public benefits.
 - Many lawfully present immigrants are ineligible for public benefits.



What is a Public Benefit?

- Public Benefits under PRWORA

- PRWORA defines the term public benefit as being either a “federal public benefit” or a “state and local public benefit.”
- If a benefit or service meets the definition of federal public benefit or state and local public benefit, then the benefit may only be given to citizens and certain immigrants with legal status.
 - For major public benefit programs (Medicaid, cash welfare, etc.) federal law requires verification that a person is an eligible immigrant.
 - If an person cannot show eligible alien status then the benefit is denied.



Benefits and Services Without Restrictions

- Public Benefits under PRWORA
 - Even though PRWORA is comprehensive, there are no immigration status restrictions for many public benefit programs.
 - Services that do not meet the definition of public benefit;
 - Services necessary for the protection of life or safety. 66 Fed. Reg. 3613 (Jan. 2001);
 - Services provided by nonprofit entities. 8 U.S.C. §1642 (d).
 - Other exemptions
 - Emergency Medicaid,
 - Public Health Immunization and Communicable Disease Programs.



Who is Eligible for Restricted Public Benefits?

- U.S. Citizens and Qualified Aliens are eligible for public benefits.
- Qualified Alien means:
 - Lawful Permanent Residents;
 - Refugees, persons granted asylum, or withholding of deportation/removal, and conditional entrants;
 - Persons granted parole by the Department of Homeland Security for a period of at least one year;
 - Cuban and Haitian entrants;
 - Certain abused/battered immigrants, their children, and or their parents;
 - Certain victims of human trafficking.
- All other immigrants are ineligible for restricted benefits.



State Laws Restricting Public Benefits for Immigrants

- Over the past 5 years, a total of ten states have adopted laws imposing verification requirements on applicants for public benefits.
- In most states, the state laws have been interpreted narrowly to affect only a few public benefit programs.
- However, in Nebraska, the interpretation of the reach of the law has been more broad.



LB 403's Public Benefits Provisions

- In general, LB 403:
 - 1) Prohibits “public benefits” to be given to those who are unlawfully present in the United States, and
 - 2) Requires verification of lawful presence in order to receive public benefits.
 - Both of these requirements are subject to federal law and exemptions within the bill.



What is a Public benefit under LB 403?

- Under LB 403, “public benefit” means:
 - Any grant, contract, loan, professional license, commercial license, welfare benefit, health payment or financial assistance benefit, disability benefit, public or assisted housing benefit, postsecondary education benefit involving direct payment of financial assistance, food assistance benefit, or unemployment benefit or any other similar benefit provided by or for which payments or assistance are provided to an individual, a household, or a family eligibility unit by an agency of the United States, the State of Nebraska, or a political subdivision of the state of Nebraska.



LB 403's affect on public benefits

- LB 403's affect on public benefits:
 - LB 403 does *not* change anything for the big public programs.
 - Medicaid, Medicare, CHIP, Food Stamps, Cash Welfare, etc.
 - Changes have in some cases occurred with programs that never had any immigrant restrictions.



LB 403's affect on public benefits

- Medicaid
 - Medically handicapped children's program.
- Public Health
 - *Every Woman Matters, Wise Women, and Colorectal Cancer Screening.
- Children and Families Programs
 - Child welfare services (preventing abuse and neglect).
 - Foster care maintenance payments, adoption subsidy.
- Behavioral Health Services System
 - Mental health and substance abuse treatment; involuntary commitment, crisis stabilization, detoxification, etc.
- Other Departments
 - *Driver's licenses, permits, and identity cards.
 - The Homestead exemption.
 - *State funded scholarships and similar financial aid.
 - *This benefit or program has been officially restricted



Medicaid Coverage of Prenatal Care--Loss Unrelated to LB 403

- Early this year, it came to light that Medicaid will no longer cover prenatal care for unborn children.
 - This means that Medicaid will not cover prenatal care for pregnant women unless the applicant is a qualified alien.
 - This change is unrelated to LB 403.
- But, emergency Medicaid will cover labor and delivery, regardless of immigration status, if all other eligibility requirements are met.
 - If the mother gets emergency Medicaid coverage then the newborn is automatically eligible for Medicaid for one year.
 - Even if the mother does not get emergency Medicaid, a child born in the U.S. is a U.S. Citizen and would qualify for Medicaid.



LB 403's Verification Procedure

- An applicant for public benefits must attest that:
 - They are a U.S. citizen or a qualified alien and are lawfully present in the United States.
 - If a person attests that they are a U.S. Citizen that is the end of the verification process.
 - If an alien falsely claims to be a U.S. Citizen there serious penalties.
 - If a person attests they are a qualified alien and lawfully present, verification of that status must be performed through the Systematic Alien Verification for Entitlement (SAVE) Program.
- SAVE is available only for Federal, State, and Local governments or agencies. It is not available to private organizations at this point in time.



What Does This Mean for Employers Providing Benefits or Services?

- LB 403 affects only federal, state, or locally-funded benefits or services
 - If an organization provides services not funded by federal/state/local governments LB 403 does not apply.
 - For example, a benefit or service that is paid for with private funds would not require immigration status verification.
- Big public benefit programs (Medicaid, CHIP, Food Stamps, etc.)
 - No new restrictions on eligibility but possibly new procedures for verification.



What Does This Mean for Employers Providing Benefits or Services?

- Other benefits or services
 - Benefit providers need to review contracts with government entities to see if the contract requires verification of lawful presence.
 - Benefit providers need to determine whether there has been an official restriction on the benefit or service by checking with the source funding the benefit.
 - In the absence of a contract requirement or an official restriction, organizations must determine on their own if LB 403 applies to their services.
 - No penalties under LB 403 for noncompliance with verification.
- Exemptions
 - Nonprofits are exempt from LB 403's requirements;
 - Life and Safety Exemptions;
 - Emergency Medicaid.



LB 403's Employer Provisions

- LB 403's Public Employer/Contactor Requirements
 - 1) *Public employers and public contractors* must use a federal immigration verification system (E-Verify) to verify the work eligibility status of *new employees* in Nebraska.
 - 2) Contracts between public employers and public contractors will now require the public contractor to use E-Verify to verify the work eligibility status of *new employees* in Nebraska.
 - LB 403 is not retroactive: The act does not apply to persons hired or contracts awarded prior to the passage of LB 403.



LB 403's Employer Provisions

- What is a public employer?
 - “Public employer” means:
 - Any agency or political subdivision of the State of Nebraska.
- What is a public contractor?
 - “Public contractor” means:
 - Any contractor *or his or her subcontractor* who is awarded a contract by a public employer for the physical performance of services within the State of Nebraska.
- What is a new employee?
 - Not defined
 - Questions remain: contract renewal, volunteers, etc.



LB 403's Employer Provisions

- Private Employers
 - The Department of Labor is required to make information about E-Verify available to private employers and to “encourage” its use.
 - Encouragement
 - Employers that do not use E-Verify may lose certain tax incentives they may have otherwise received.



LB 403's Employer Provisions

- What is a federal immigration verification system?
 - “Federal immigration verification system” means:
 - *The E-Verify Program* or
 - An equivalent federal program designated by the United States Department of Homeland Security or other federal agency.



LB 403's Employer Provisions

- What is E-Verify?
 - E-Verify is an Internet based system operated by the Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA) that allows participating employers to electronically verify the employment eligibility of newly hired employees.



LB 403's Employer Provisions

- Impermissible Uses of E-Verify:
 - Re-verification of Employees through E-Verify
 - E-Verify use on *Job Applicants*
 - Selective use (discrimination)



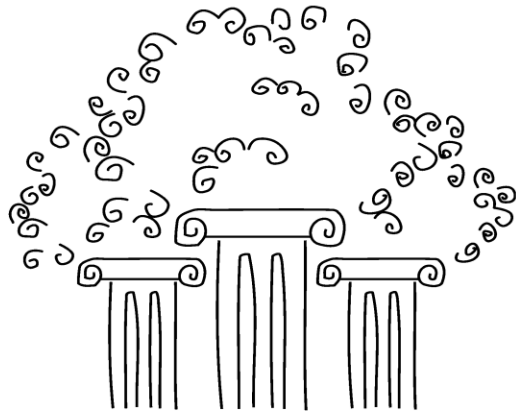
What Does This Mean for Employers?

- Public Employers and Public Contractors
 - Must use E-Verify for new employees
 - But cannot use on applicants, re-verify old employees, or use selectively.
 - If E-Verify is abused access to the program may be lost, which would affect the ability of an employer to get state contracts.
 - Subcontractors of a public contractor must use E-Verify.
- Private Employers
 - Are encouraged to use E-Verify for new employees and face potential loss of tax incentives for failing to use E-Verify.



Questions?

Nebraska Appleseed Center for Law in the Public Interest



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